STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION
PO Box 9033
Olympia, WA 98501-9033
(360) 902-8760

FOR VALIDATION ONLY 001-080-238-0001

FRANCHISE REGISTRATION APPLICATION

APPLICATION FOR (check only one):

- ☐ REGISTRATION OF AN OFFER OR SALE OF FRANCHISES – $600.00
- ☐ REGISTRATION RENEWAL STATEMENT OR ANNUAL REPORT – $100.00
- ☐ POST-EFFECTIVE AMENDMENT#_____
- ☐ PRE-EFFECTIVE AMENDMENT # _____

FILE NO.
INSERT FILE NO. OF PREVIOUS FILINGS OF APPLICANT, IF ANY
FEE (To be enclosed by applicant at time application is initially filed)
DATE OF APPLICATION

1. NAME OF FRANCHISOR _____

   DBA (if applicable _____

   NAME UNDER WHICH THE FRANCHISOR IS DOING OR INTENDS TO DO BUSINESS _____

   _____

2. FRANCHISOR'S PRINCIPAL BUSINESS ADDRESS _____

   _____

   TELEPHONE NUMBER _____

3. NAME OF PERSON TO WHOM COMMUNICATIONS REGARDING THIS APPLICATION SHOULD BE DIRECTED _____

   ADDRESS _____

   TELEPHONE NUMBER _____

4. NAME OF FRANCHISOR'S AGENT AUTHORIZED TO RECEIVE PROCESS _____

   _____

   ADDRESS _____

   IN THE STATE OF _____

5. NAME OF SUBFRANCHISOR'S, IF ANY FOR THIS STATE _____

   _____

   ADDRESS _____

   TELEPHONE NUMBER _____

UNIFORM CONSENT TO SERVICE OF PROCESS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, _____

(a corporation) (a partnership) organized under the laws of the state of _____

(an individual) (_____), for the purpose of complying with the laws of the state of
(Other)

Washington relating to the registration, exemption from registration or sale of franchises, hereby irrevocably appoints the Administrator of Securities, and the successors in such office, its attorney in the state of Washington upon whom may be served any notice, process, or pleading in any action or proceeding against it arising out of or in connection with the sale of franchises, or out of violation of the aforesaid laws of said state; and the undersigned does hereby consent that any such action or proceeding against it may be commenced in any court of competent jurisdiction and proper venue within said state by service of process upon said officer with the same effect as if the undersigned was organized or created under the laws of said state and had lawfully been served with process in said state.

It is requested that a copy of any notice, process, or pleading served hereunder by mailed to (Name and Address: _____

DATED: _____, 19 ___

BY: _____

SEAL

TITLE: _____

BY: _____

TITLE: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On this _____ day of _____SS.___, 19 ___, before me personally appeared

_____

to me known personally to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument and that the seal affixed in the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

_____

MY COMMISSION EXPIRES NOTARY PUBLIC _____

NOTARIAL SEAL

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____ SS.

On this _____ day of _____, 19 ___, before me _____

_____

the undersigned officer, personally appeared

_____

to me personally known and known to me to be the same person(s) whose name(s) is (are) signed to the foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARIAL SEAL _____

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

SIGNATURE PAGE

I certify under penalty of law that I have read this application and the exhibits attached hereto and incorporated herein by reference, and know the contents thereto and incorporated herein by reference, and know the contents thereof and that the statements therein are true and correct to the best of my knowledge.

Executed at _____, _____, 19 _____.

SIGNATURE(S) OF FRANCHISOR AND/OR SUBFRANCHISOR

_____

_____

SEAL

BY _____

TITLE _____

STATE OF _____

COUNTY OF _____ SS.

Personally appeared before me this _____ day of _____, 19 _____, the above named _____, (and)

_____,

to me known to be the person(s) who executed the foregoing application (as _____ and applicant) and (each), being first duly sworn, stated upon oath that said application, and all exhibits submitted herewith, are true and correct.

NOTARIAL SEAL _____

NOTARY PUBLIC

MY COMMISSION EXPIRES _____

SUPPLEMENTAL INFORMATION PAGE

1. List the following:

   a. The states in which this proposed registration is effective
   b. The states in which this proposed registration is or will be shortly on file.
   c. The states, if any, which have refused, by order or otherwise, to register these franchises.
   d. The states, if any, which have revoked or suspended the right to offer these franchises.
   e. The states, if any, in which the proposed registration of these franchises has been withdrawn.

2. With respect to all franchises sought to be registered set forth, in budget form, the total projected financing required by franchisor to fulfill the franchisor's obligations to provide real estate, improvements, equipment, inventory, training and all other items included in the offering. Show separately the sources of all of the required funds including any proposed loans or contributions to capital.

FRANCHISE ACT INTERPRETIVE AND POLICY STATEMENTS

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TOPICAL INDEX TO FRANCHISE ACT INTERPRETIVE AND POLICY STATEMENTS

CITATIONS IN FRANCHISE ACT INTERPRETIVE AND POLICY STATEMENTS

Citation	Where Found	Topic
RCW's		
19.100.010(8)	FIS-01	Subfranchisor Registration Requirements
19.100.010(9)	FIS-01	Subfranchisor Registration Requirements
19.100.010(11)	FPS-06	Broker Registration Required
19.100.010(14)	FIS-01	Subfranchisor Registration Requirements
19.100.010(15)	FIS-01	Subfranchisor Registration Requirements
19.100.020	FIS-01	Subfranchisor Registration Requirements
19.100.030(4)	FIS-01	Subfranchisor Registration Requirements
19.100.030(4)(b)(ii) and (iii)	FIS-05	Unavailability of Exemptions for Franchisors Participating in Advertised Trade Shows
19.100.040	FIS-01	Subfranchisor Registration Requirements
19.100.040(7)	FIS-01	Subfranchisor Financial Statements
19.100.040(24)	FIS-01	Subfranchisor Financial Statements
19.100.050	FPS-03	Surety Bonds in Lieu of an Impound
19.100.180	FIS-02	Restrictions on Transfer of Franchises
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19.100.180(2)(c)	FIS-02	Restrictions on Transfer of Franchises
19.100.180(2)(c)	FIS-02	Termination of Franchises
19.100.180(2)(g)	FIS-02	Release Requirements and Terminations of Franchises
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80-125(5)	FIS-01	Subfranchisor Registration Requirements
80-125(8)	FIS-01	Subfranchisor Registration Requirements
80-140	FIS-01	Subfranchisor Registration Requirements
80-410	FPS-03	Surety Bonds in Lieu of an Impound

FRANCHISE ACT INTERPRETIVE STATEMENT FIS-1

RE: SUBFRANCHISOR REGISTRATION REQUIREMENTS

Questions Presented:

1. What is a subfranchise?

RCW 19.100.010(9) defines "subfranchisor" to mean a person to whom an area franchise is granted.

RCW 19.100.010(8) in turn defines "area franchise" to mean "any contract or agreement between a franchisor or subfranchisor whereby the subfranchisor is granted the right to sell or negotiate the sale of franchises in the name or on behalf of the franchisor."

"Sale" or "sell" includes every contract of sale, contract to sell, or disposition of a franchise, as set forth in RCW 19l.100.010(14). "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer by buy a franchise or an interest in a franchise. RCW 19.100.010(15).

An area franchise involves the contractual right of the subfranchisor to direct and conduct the sale or arrangement for sale of franchises within a specified area. This relationship is distinguished from a franchise broker or selling agent who is merely an agent of the franchisor and has no separate contract right to direct and conduct the negotiation or sale of a franchise.

2. When must a subfranchisor register?

RCW 19.100.020 makes it unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under the Franchise Investment Protection Act or is exempted from registration. If a subfranchisor offers or sells or is a substantial factor in arranging the offer and sale of a franchise, the offering by the subfranchisor must be registered or exempted therefrom. A subfranchisor, in making such an offer, may avail itself or the exemptions of RCW 19.100.030(4), but then only to the extent that the offers and sales by the franchisor and subfranchisor taken together meet the requirements set forth in the exemption.

3. When must both the franchisor and the subfranchisor file a registration statement?

A subfranchisor that intends to offer or sell in the state must in all cases make application for registration as required by RCW 19.100.040. If the franchisor also intends to offer franchises in the state, it too must comply with RCW 19.100.040. The Securities Administrator requires the franchisor and its subfranchisors to file separate registration statements and pay separate filing fees for their offerings.

4. Must a subfranchisor file audited financial statements?

RCW 19.100.040(7) sets forth the requirement for financial statements of the franchisor. Subsection (7) of RCW 19.100.040 allows the Securities Administrator to determine the form and content of financial statements, the circumstances under which consolidated statements can be filed and sets the circumstances in which audited financial statements are required. As previously stated, RCW 19.100.040(24) requires the same financial information concerning the subfranchisor. Therefore, a subfranchisor must file its financial statement along with those of the franchisor. See also WAC 460-80-125(5).

The financial statements of the subfranchisor must be audited. The administrator has promulgated WAC 460-80-140 with regard to financial statements. This rule states that all financial statements shall be audited by a certified public accountant (with certain exceptions). Waiver of audited financial statements is allowed in extraordinary situations as set forth in (b) of WAC 460-80-140. A

subfranchisor may request waiver of audited financial statements pursuant to this subsection. In certain instances the need for audited financial statements of the subfranchisor may be waived if the financial soundness of the subfranchisor is guaranteed by the franchisor.

Adopted January 1, 1991
Replaces Statements of Policy 82-13 and 86-66
JACK L. BEYERS, Securities Administrator
Prepared by Michael E. Stevenson, Securities Examiner

FRANCHISE ACT INTERPRETIVE STATEMENT FIS-2

RE: RESTRICTIONS ON TRANSFER OF FRANCHISES

Questions Presented:

What restrictions on transfer of a franchise by a franchisee may be allowed consistent with RCW 19.100.180?

Discussion

Many franchise agreements include provisions restricting transfer of the franchise by the franchisee. These provisions often prohibit certain types of transfers, create rights of first refusal in favor of the franchisor, or require consent of the franchisor prior to the transfer. The restrictions on transfer may be so severe that they greatly reduce or eliminate the value of the franchise to the franchisee. The provisions in the franchise agreement may allow the franchisor unlimited desecration to decide whether to allow a transfer.

Transfers of franchises can be categorized in two ways: whether a transfer is voluntary or involuntary and whether a transfer is of the entire interest in a franchise or of less than the entire interest in the franchise.

Involuntary Transfers

The permissibility of some involuntary transfers has already been specifically dealt with in the statute itself or in other interpretive statements. RCW 9.100.180(2)(j) permits the franchisor to terminate a franchise without prior notice if the franchisee is adjudicated bankrupt or insolvent. This provision is, of course, subject to the provisions of the federal Bankruptcy Act. The issue of transfer of the franchise upon death of the franchisee has already been dealt with in Franchise Act Interpretive Statement FIS-3. Other involuntary transfers should be viewed in a similar manner. Examples include property division in marriage, dissolution's, imposition of guardianships, and other court ordered transactions.

Voluntary Transfers

Voluntary, either complete or partial, transfers of a franchise by the franchisee and voluntary transfers of ownership interests in the franchise are often subject to restrictions in the franchise agreement. In order to meet the good faith standard of subsection (1) and the fair practices standard of (2) (c) and (h) of RCW 19.100.180, the restrictions on transfer in the franchise agreement may not allow the franchisor to unreasonably withhold its consent to a transfer of otherwise unreasonably restrict transfer., In this context, it is unreasonable for a franchisor to withhold consent to any transfer where the transferee meets the franchisor's criteria for purchase of an initial franchise. For example, if the franchisor will initially sell its franchises to corporations, it may not prohibit a franchisee from incorporating and may not prohibit the franchisee from transferring the franchise to a corporate franchisee. The same principle applies to restrictions on transfer of the stock of a corporate franchisee and transfer of less than the entire interest of the franchise. In addition to the "initial franchisee" criteria used by the franchisor, franchise agreement provisions which require personal participation of the franchisee in the franchise business are relevant in determining whether restrictions on transfers are reasonable.

Transfer Fee and Release Requirements

Franchisors may also attempt to restrict transfers indirectly by imposing exorbitant transfer fees and requiring the transferor to sign a release of all claims against the franchisor. The transferee may be required to sign the current franchise agreement rather than take an assignment of the franchisee's existing agreement.

Restrictions on transfer may only be imposed in good faith and must be reasonable. RCW 19.100.180(1)
and (2)(h). Transfer fees are permissible only to the extent they compensate the franchisor for expenses directly incurred as a result of transfer. The franchise agreement may specify the amount of the transfer fee so long as such amount is a reasonable estimate of anticipated transfer expenses. The requirement of a release by the franchise to the franchisor is acceptable so long as it does not

include a release of the franchisee's claims under the Washington Franchise Investment Protection Act. Requiring inclusion of such claims in the release violated RCW 19.100.180(2) (g). However, RCW 19.100.220 provides that a release or waiver, executed pursuant to a negotiated settlement after the agreement is in effect, is not void where the parties are represented by independent legal counsel.

Adopted January 1, 1991, as amended 11-12/91
Replaces Statement of Policy 85-60
JACK L BEYERS, Securities Administrator
Prepared by Suzanne Sarason, Securities Examiner

FRANCHISE ACT INTERPRETIVE STATEMENT FIS-3

RE: RCW 19.100.180(2) (j) — TERMINATION OF A FRANCHISE
RCW 19.100.180(1)
RCW 19.100.180(2) (c)

Question Presented:

May a franchisor terminate a franchise upon the death of the franchisee?

Statutes:

RCW 19.100.180(1) provides that the parties to a franchise agreement shall deal with each other in good faith.

RCW 19.100.180(2) (c) makes it an unfair act or practice or unfair method of competition for a franchisor to discriminate between franchisees in business dealings unless proven to be reasonable, justified and not arbitrary.

RCW 19.100.180(2) (j) renders it an unfair act or practice or unfair method of competition for a franchisor to terminate a franchise prior to the expiration of its terms except for good cause.

Discussion:

Pursuant to RCW 19.100.180(1), the parties to a franchise agreement must deal with each other in good faith. Where the franchise is not one that relies upon the unique talents of the franchisee, and particularly where the franchise agreement does not require that the franchisee personally participate in the operation of the business, a provision that allows the franchisor to terminate the franchise upon the death of the franchisee would not be in good faith and would violate the requirements of RCW 19.100.180(1).

RCW 19.100.180(2) (c) prohibits discrimination between franchisees unless the franchisor can prove that the discrimination is reasonable. A provision allowing the franchisor to terminate a franchise upon the death of the franchisee would discriminate against individual franchisees, who have a limited life, in contrast with corporate franchisees, who have a perpetual life. The corporation's franchise could continue, even though the ownership of the corporation could change completely during the term of the franchise. Provisions which allow the franchisor to terminate the franchise upon the death of the franchisee are also discriminatory where the franchise agreement allows inter vivios transfers of the franchise. The franchisor must prove that the distinction between the two kinds of transfers of the franchisee's interest is reasonable.

To terminate the franchise prior to expiration of its term, the franchisor must have good cause. Good cause is expressly defined in RCW 19.100.180(2) (j) as the failure of the franchisee to comply with lawful material provisions of the franchise agreement. Death of the franchisee is not an express ground for good cause.

Conclusion:

A franchisor may not terminate a franchise upon the death of the franchisee unless the franchisor can show that the termination is for good cause under RCW 19.100.180(2) (j) and it does not violate RCW 19.100.180(1) and (2) (c). In the registration of a franchise, the Securities Administrator finds that a provision allowing the franchisor to terminate the franchise upon the death of the franchisee should be allowed only in unusual circumstances.

Adopted: January 1, 1991
Replaces Statement of Policy 83-30
JACK J. BEYERS, Securities Administrator
Prepared by Michael E. Stevenson, Securities Examiner

FRANCHISE ACT INTERPRETIVE STATEMENT FIS-4

RE: ARBITRATION SITE, RCW 19.100.180(1)

Question Presented:

May a franchisor in a franchise agreement require the franchisee to arbitrate in a state other than Washington?

Statutes:

RCW 19.100.180(1) requires that the parties to a franchise agreement deal with each other in good faith. Additionally, RCW 19.100.180(2) (h) renders it an unfair act or practice to impose on a franchisee by contract an unreasonable standard of conduct.

Discussion:

The franchisor must deal with the franchisee in good faith. Often the franchisor has much greater bargaining power than the franchisee. In such cases, the franchise agreement will require that every arbitration between the parties take place in a state other than Washington. Typically this is the home state of the franchisor and is many times very distant from Washington State. In these instances, the site of the arbitration outside the state of Washington is a non-negotiable contract clause. In which case, the franchisee will be required to arbitrate at a site which is not related to the subject matter of the arbitration and inconvenient to the franchisee and third party witnesses.

Recent court cases demonstrate that an agreement to arbitrate preempts judicial action which might be taken under the Franchise Investment Protection Act of Washington. However, these cases do not prevent the Franchise Investment Protection Act from determining when and under what circumstances it is fair and reasonable to include arbitration in the franchise agreement.

Conclusion:

The Securities Administrator finds that it is not in good faith, reasonable or a fair act and practice for a franchisor to require an arbitration clause in a franchise agreement that unfairly and non-negotiably sets the site of arbitration in a state other than the state of Washington. Based on this finding, the Securities Administrator finds acceptable a franchise offering that includes an arbitration agreement that provides for the site of arbitration: (1) in the state of Washington, (2) as mutually agreed upon at the time of arbitration, or (3) as determined by the arbitrator at the time of arbitration.

Adopted January 1, 1991
Replaces Statement of Policy 82-14
JACK L. BEYERS, Securities Administrator
Prepared by Suzanne Sarason, Securities Examiner

FRANCHISE ACT INTERPRETIVE STATEMENT FIS-5

RE: RCW 19.100.030(4) (B) (ii) and (iii), TRADE SHOWS AND ADVERTISING

Question Presented:

Does participation in an advertised trade show in the state of Washington disqualify a franchisor from the use of the exemption RCW 19.100.030(4) (ii) or (iii)?

Discussion:

Franchise trade shows are open to the general public and typically solicit prospective attendees through mass mailings, newspaper, professional publications, radio broadcasts and other advertising media. Franchise trade shows afford franchisors a convenient opportunity to offer their franchises to the general public. Advertising may, but often does not, include the names of the franchisors or the types of franchises participating in the trade show.

The Franchise Investment Protection Act, Ch. 19.100 RCW, requires all offers and sales of franchises in the state of Washington to be registered unless a specific exemption from registration is available to the franchisor. RCW 19.100.020. One of the most used exemptions is RCW 19.100.030(4) (a), (b) (ii) and (c), which permits the franchiser to sell up to nine franchises in the state of Washington. Subparagraph (B) of RCW 19.100.030 (4) (b) (ii) specifically prohibits a franchisor from advertising:

> ". . .using radio, television, newspaper, magazine, billboard, or other advertising medium the principal office of which is located in the state of Washington or Oregon, concerning the sale of or offer to sell franchises:. . ."

Similar language is included in the exemption of RCW 19.100.030(4) (b) (iii) (B). The legislature clearly intended to prohibit franchisors using this exemption from soliciting prospective purchasers through the means of advertising set forth. A franchisor may not evade this prohibition by relying on a trade show to advertise for the franchisor.

Furthermore, subparagraph (B) prohibits a franchisor from advertising, using radio, television, newspaper, magazine, billboard **or other advertising medium.** "Medium" is broadly defined by Webster's Third New International Dictionary 1403 (1961) as a means or instrumentality by which something is communicated or carried on.

Under this broad construction, a franchise trade show itself qualifies as a means or instrumentality that allows the franchisor to advertise and offer franchises to the public. Thus, a trade show may constitute an advertising medium within the language of subparagraph (B) or RCW 19.100.030(4) (b) (ii) and (4) (b) (iii).

Conclusion:

Based upon the foregoing, participation by a franchisor in a trade show in the state of Washington removes the availability of the exemption of RCW 19.100.030(4) (a), (b) (ii) and (c) or the exemption of RCW 19.100.030(4) (a), (b), (iii) and (c).

Adopted January 1, 1991
Replaces Statement of Policy 87-68
JACK L. BEYERS, Securities Administrator
Prepared by Martin Cordell, Securities Examiner

FRANCHISE ACT POLICY STATEMENT FPS-1

RE: FRANCHISOR — FRANCHISEE RELATIONSHIP DISCLOSURE REQUIREMENTS, RCW 19.100.180

Question Presented:

How should the rights of franchisees and prohibitions of the Franchise Investment Protection Act be disclosed?

Discussion

The Washington State Securities Administrator finds that franchise offering circulars and agreements filed with the Securities Division are often inconsistent with the Washington Franchise Investment Protection Act, Chapter 19.100 RCW, and in particular, section RCW 19.100.180. RCW 19.100.180 prescribes standards of conduct between franchisors and their franchisees which includes the regulation of the renewal and termination of franchises and the prohibition on waiver of franchisee rights under the Act.

Conclusion:

If any of the provisions of the franchise offering circular or franchise agreement are inconsistent with the Washington Franchise Investment Protection Act, the franchisor shall conform the offering circular and franchise agreement to the Franchise Investment Protection Act. In order to conform the offering circular and franchise agreement to Washington law, the franchisor may attach one of the following riders to the franchise offering circular or franchise agreement:

Rider Number one:

> If any of the provisions in the franchise offering circular or franchise agreement are inconsistent with the relationship provisions of RCW 19.100.180 or other requirements of the Washington Franchise Investment Protection Act, the provisions of the Act will prevail over the inconsistent provisions of the franchise offering circular and franchise agreement with regard to any franchise sold in Washington.
>
> In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in Washington or in a place as mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

or

Rider Number Two:

> CAVEAT FOR FRANCHISOR—FRANCHISEE RELATIONSHIP STATUTES (INCLUDING RENEWAL AND TERMINATION RIGHTS)
>
> ”These states have statutes which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise: (list of states, including Washington [Code Section 19.100.180]). These and other states may have court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.”
>
> In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either Washington or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

The Administrator may permit or require modifications to the Rider as facts and circumstances warrant.
Adopted January 1, 1991
Replaces Statement of Policy 83-39
JACK L. BEYERS, Securities Administrator
Prepared by Martin Cordell, Securities Examiner

FRANCHISE ACT POLICY STATEMENT FPS-2

RE: RCW 19.100.250 & RCW 19.110.180 — REQUESTS FOR INTERPRETIVE AND NO-ACTION LETTERS

The following procedures must be followed in requesting a no-action or interpretive opinion from the Securities Division:

1. The request must be submitted to the Administrator in writing. The letter should be captioned with the name of the party who will be relying upon the Administrator's response and should indicate that a no-action or interpretive opinion is sought.
2. The requesting letter should cite the particular statutes or rules upon which interpretation or no-action is sought.
3. The names of all involved companies and parties should be disclosed. The Division does not issue interpretive or no-action letters relating to unnamed companies or individuals or hypothetical situations, nor on matters of pending, or in preparation for, litigation.
4. The request should be tailored to resolving the issue at hand and should not attempt to discuss every possible situation that may arise in the future.
5. The letter should be concise, to the point, and contain all material facts necessary to resolve the issues at hand. Relevant documents may be included, but are not a substitute for item 6.
6. It is important that the writer indicate why it is believed a problem exists, his or her opinion and proposed resolution, and the precedents or other legal authority supporting that position.

The Division may decline to respond to letters that are not prepared in accordance with the above listed procedures.
See RCW 19.100.250 & RCW 19.110.180.

Adopted January 1, 1991
Replaces Statements of Policy 83-37
JACK L. BEYERS, Securities Administrator
Prepared by William M. Beatty, Securities Examiner

FRANCHISE ACT POLICY STATEMENT FPS-3

RE: RCW 19.100.050, Surety Bonds in Lieu of an Impound

Question Presented:

If a franchise impound is required as a condition for registration pursuant to RCW 19.100.050, may a franchisor substitute a surety bond for a franchise impound agreement?

Statute:

RCW 19.100.050 authorizes the Securities Administrator to require the escrow or impoundment of franchise fees if the Administrator find that it is necessary and appropriate for the protection of prospective franchisees.

Regulation:

WAC 460-80-410 provides that where a franchise applicant has failed to demonstrate that adequate financial arrangements have been make to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the Administrator may impose as a condition of registration an impoundment of franchise fees and other funds paid by the franchisee or subfranchisor until no later than the opening of the franchise business.

Discussion:

RCW 19.100.050 and WAC 460-80-410 authorizes the Securities Administrator to impound franchise fees where the franchisor has failed to demonstrate that adequate financial arrangements have been made to fulfill its obligations to franchisees. Funds held in escrow or in an impound account are not released by the Administrator until the franchisor has fulfilled its obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering until no later than the opening of the franchise business. Generally, the Administrator will impose such a condition when a franchisor is undercapitalized, potentially insolvent or is a start-up or development stage company. Other registration states permit a surety bond to be used in lieu of an impound account. A surety company provides a surety bond which guarantees payment to the franchisees if the conditions of the bond, such as the franchisor's duty to provide real estate, improvements, equipment, etc. . . , are not met. The amount of the bond is the amount of the initial franchise fee times the number of franchises expected to be offered in the state during the next twelve months.

Conclusion:

The Securities Administrator has determined that a franchisor may demonstrate that adequate financial arrangements have been made to fulfill its obligations to a prospective franchisee by submitting a surety bond in lieu of a franchise impound agreement. The amount of the bond is fixed at the amount of the initial franchise fee multiplied by the estimated number of franchises to be sold in a twelve month period in the state of Washington.

Adopted January 1, 1991
Replaces Statement Policy 85-63
JACK L. BEYERS, Securities Administrator
Prepared by Martin Cordell, Securities Examiner

FRANCHISE ACT POLICY STATEMENT FPS-4

RE: FRANCHISE BROKER LICENSE EFFECTIVE PERIOD

Question Presented:

RCW 19.100.240(4) provides that the initial registration fee for a franchise broker will be fifty dollars and twenty five dollars for each annual renewal. What it the effective period of a Franchise Broker license to be used in determining the annual renewal date?

Conclusion:

The Franchise Broker's License shall be effective for the calendar year and shall expire on the last day of the year.

Adopted January 1, 1991. As Amended October 23, 1991
Replaces Statement of Policy 83-50
JACK L. BEYERS, Securities Administrator
Prepared by Martin Cordell, Securities Examiner

FRANCHISE ACT POLICY STATEMENT FPS-5

RE: FILING DATE DETERMINATION

Question Presented:

The Washington Franchise Investment Protection Act provides that certain documents be filed with the Director of the Department of Financial Institutions. How is the filing date of a document filed with the Director determined?

Discussion:

The Securities Administrator has interpreted the Act to mean that the filing date is the first date it can be proven that the document was received by the Securities Division of the Department of Financial Institutions. All mail and hand carried franchise documents coming directly to the Securities Division of the Department of Financial Institutions will be date stamped. The statutory time period will begin running the following business day. If the documents are mailed to the Director of the Department of Financial Institutions, they will be date stamped there and the statutory time will begin running the following business day. The Revenue Accounting Section of the Department of Financial Institutions also provides a validation date of its receipt of documents and funds. The Revenue Accounting Section's validation date stamp will be used only if that is the first date that it can be proven to be received by the Department. In order to assure proof of receipt of a filing, the Securities Division recommends that documents be sent by certified mail or hand delivered to the Securities Division offices.

Adopted January 1, 1991
Replaces Statement of Policy 83-31
JACK L. BEYERS, Securities Administrator
Prepared by William M. Beatty, Securities Examiner

FRANCHISE ACT INTERPRETIVE STATEMENT - 06

RE: RCW 19.100.010(11) — "FRANCHISE BROKER"

Question Presented:

Under what circumstances must a person offering or selling franchises register as a "franchise broker" as that term is defined in RCW 19.100.010(11)?

Statute:

RCW 19.100.010(11) defines "franchise broker" as "a person who directly or indirectly engages in the business of the offer or sale of franchises. The term does not include a franchisor, subfranchisor, or their officers, directors, or employees." (Emphasis added)

Discussion:

Under prior law, the Franchise Investment Protection Act required registration of both franchise brokers and selling agents. Most franchises were sold by registered selling agents directly employed by franchisors. Selling agents, contractors, or consultants who set up independent businesses to represent several franchisors were required to register as franchise brokers.

The 1991 legislature eliminated the registration requirement for franchise selling agents and expanded upon the definition of "franchise broker." While franchise brokers are still subject to registration, the legislature statutorily excepted from the definition of "franchise broker" the franchisor or subfranchisor, and their officers, directors and employees. If the person engaged in sales activities is not the franchisor, subfranchisor, or a bona fide officer, director or employee of the franchisor or subfranchisor, then the answer to the question presented turns on whether the person is "in the business of the offer or sale of franchises." Considerations in determining whether a person or company is in the business of the offer or sale of franchises include, without limitation:

1. Independent Contractors. A person who is an independent agent, contractor or consultant representing one or more franchisors would generally be deemed to be a franchise broker;
2. Commissions. A person who receives a commission or other transactional-based compensation in connection with the offer or sale of a franchise would generally be considered a franchise broker;
3. The level of recurrence. A person who offers or sells two or more franchises is generally presumed to be a franchise broker;

Employees. A person who is an employee of a franchise broker is not "in the business" of offering or selling franchises.

Conclusion:

A person who engages "in the business" of offering or selling franchises is a franchise broker pursuant to RCW 19.100.010(11) unless the person is the franchisor, subfranchisor, or one of its officers, directors, or employees, or is employed by a franchise broker.

Adopted July 28, 1991
Replaces N/A
JACK L. BEYERS, Securities Administrator
Prepared by William M. Beatty, Securities Examiner